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IMPLEMENTATION OF THE DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES

Question of Western Sahara

Report of the Secretary-General

1. On 6 December 1995, the General Assembly adopted, without a vote, resolution 50/36 on the question of Western Sahara. The present report, which covers the period from 5 October 1995 to 30 September 1996, is submitted in pursuance of paragraph 10 of that resolution.

2. The Secretary-General, in close cooperation with the current Chairman of the Organization of African Unity (OAU), has continued to exercise his good offices with the parties concerned.

3. On 24 November 1995, the Secretary-General submitted a report 1/ to the Security Council in which he described his further efforts and those of his Acting Special Representative, Mr. Erik Jensen (Malaysia), to move the identification process forward. The Secretary-General recalled that in his report to the Council of 8 September 1995, 2/ he had stated that the United Nations Mission for the Referendum in Western Sahara (MINURSO) had an obligation to consider all applications that had been correctly submitted, and had suggested that, in order to enable MINURSO to meet its obligations in circumstances where the Frente Popular para la Liberación de Saguia el-Hamra y de Río de Oro (Frente POLISARIO) was unwilling or unable to make a sheikh available, identification should be based on documentary evidence. That proposal had been explained in detail to the Moroccan authorities by the Secretary-General himself and, on his instructions, by his Acting Special Representative, to the leadership of the Frente POLISARIO and to the members of the Security Council. On 27 October 1995, in a letter to the President of the Security Council, 3/ the Secretary-General had provided further elaboration of his proposal.

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4. The Government of Morocco informed the Acting Special Representative of its unwillingness to accept a process that would differentiate between different groups of applicants and reiterated its insistence on oral testimony. For Morocco, the distinction proposed between the treatment of members of 85 tribal subfractions and other applicants would amount to discrimination and was contrary to the settlement plan for Western Sahara. 4/ Morocco considered this suggested "simplification" of the procedure as a radical departure from that plan and from the instructions to the Identification Commission, which recognized the specific nature of Saharan society and the role of oral testimony alongside various types of documentary evidence.

5. On 6 November 1995, in a letter to the Secretary-General, 5/ the President of the Security Council acknowledged his letter of 27 October. The Secretary-General was requested to continue his contacts with the parties and to report to the Council by 15 November 1995 pursuant to paragraph 4 of resolution 1017 (1995) of 22 September 1995.

6. The Secretary-General then proposed that the operation be completed with the adoption of the following procedure. In accordance with established practice and agreed principles, both parties would be invited to present a sheikh, or alternate, of the subfraction concerned and to be represented during the identification process. An OAU observer was also expected to attend. When two sheikhs, or alternates, were present, one from each side, identification would take place according to the normal proceeding. When one party did not, for whatever reason, provide a sheikh or alternate, identification would take place on the basis of appropriate documentation, with the assistance of the one sheikh present. In the case that neither party was willing or able to make available a sheikh or alternate, identification would be based on documentary evidence only. The Secretary-General pointed out that the settlement plan provided for the lodging of appeals against the inclusion or exclusion of any names in the list of eligible voters established by the Identification Commission and that that should serve as additional guarantee to both parties.

7. In a communication dated 13 November 1995 to the Acting Special Representative, the Government of Morocco wished to be assured that the sheikh, when only one was present, would contribute to the identification in exactly the same manner as when there were two. Having already rejected any attempt to limit valid documents to those issued by the Spanish authorities, it considered the reference to appropriate documentation as too vague and therefore liable to restrictive interpretation. It further found unacceptable the proposal that identification could take place without the participation of any sheikh. In its view, that had no basis in the settlement plan and instructions to the Identification Commission, since it would exclude oral testimony entirely.

8. In a letter dated 18 November 1995, the Frente POLISARIO stated that it would not subscribe to the Secretary-General's new proposal, which it considered as a reversal of the earlier approach. It could not accept the pretext offered of a so-called departure from the framework of the settlement plan or the refusal of the other party to subscribe to the proposal in the Secretary-General's letter to the Security Council of 27 October. 3/ In the view of the Frente POLISARIO, the implementation of the new proposal would again give Morocco an added advantage and the opportunity to introduce, by means of a

sheikh of its choice and of its own documents, 135,000 applicants who had no ties with Western Sahara. That would be tantamount to holding a referendum for a people other than the Western Saharans. Adoption of such an approach would prompt the Frente POLISARIO to draw the "appropriate" conclusions as to its involvement with regard to the settlement plan.

9. In his report, 1/ the Secretary-General concluded that although neither party was likely to be satisfied, his new proposal was the only way the process could be carried forward. He hoped that both parties would be persuaded to cooperate and give the identification process a chance. Should it fail to proceed with the necessary speed, it would be his intention, as requested by the Security Council in its resolution 1017 (1995), to present for the consideration of the Council alternative options, including the possibility of the withdrawal of MINURSO.

10. In its resolution 1033 (1995) of 19 December 1995, the Security Council welcomed the Secretary-General's decision to intensify his consultations with the two parties in an effort to obtain their agreement to a plan to resolve differences hindering the timely completion of the identification process. With this objective in mind, a mission headed by Under-Secretary-General Chinmaya R. Gharekhan, acting as the Secretary-General's Special Envoy, undertook a visit from 2 to 9 January 1996 to Rabat, Tindouf, Nouakchott and Algiers.

11. In his report of 19 January 1996, 6/ the Secretary-General informed the Security Council that at both Rabat and Tindouf his Special Envoy had stressed the need for both parties to take urgent steps to overcome their differences relating to the implementation of basic aspects of the settlement plan in order to provide the basis for the Council to support the continuation of MINURSO. He advised that, in case there was no progress at all towards a meaningful resumption of the work of the Identification Commission, the Secretary-General would be obliged to inform the Council accordingly in his forthcoming report. He brought to their attention the Council's request to the Secretary-General, contained in its resolution 1033 (1995), to provide it with options for its consideration, including a programme for the orderly withdrawal of MINURSO in the event the intensified consultations undertaken by the special mission failed to lead to agreement.

12. Both sides confirmed their commitment and continuing desire to hold a free and fair referendum on the future status of Western Sahara in conformity with the settlement plan and assured the Special Envoy of their readiness to cooperate fully with the United Nations in order to overcome the obstacles standing in the way of the implementation of the plan. At the same time, each insisted that there was no room left for additional concessions on its part.

13. The Frente POLISARIO agreed to participate in the identification of a significant number of applicants about whom it had earlier expressed reservations. Specifically, it agreed to proceed with the identification of all applicants, irrespective of their place of residence, who were members of subfractions included in the 1974 census, i.e., subfractions for which lists of sheikhs or alternates from both parties had already been established. Holding the view, however, that under the established criteria, applications from

persons other than those belonging to subfractions specifically represented in the census were not admissible, it continued to decline to cooperate in the identification of applicants from three tribal groups that were not represented by subfractions in the 1974 census. Moreover, it was not able to present sheikhs or alternates for such groups. For its part, Morocco maintained that all applicants must be processed by the Identification Commission without discrimination as to the format or treatment. In his discussions with the Frente POLISARIO, the Special Envoy emphasized that the Commission was obliged to process all applications submitted before the expiry of the relevant deadline.

14. In its meetings with the Special Envoy, the Frente POLISARIO mentioned the need for more transparency in the work of the Identification Commission. While agreeing to the need for transparency, the Special Envoy rejected any notion that the Commission had failed to observe complete impartiality in the performance of its tasks. After discussing with the Acting Special Representative and the Chairman of the Commission possible ways to increase transparency, the Special Envoy concluded that that could contribute to reducing mistrust and suspicion and serve to instil more confidence in the process. To that end, it was agreed that the Commission would make arrangements to share with both parties, in suitable format, a list of applicants identified thus far as eligible to vote, as well as a list of applicants still to be identified.

15. During meetings at Algiers and Nouakchott, leaders of the two observer countries confirmed to the Special Envoy their continuing strong interest in a speedy settlement of the Western Sahara conflict as a fundamental prerequisite for the stability and development of the region. The Governments of both Algeria and Mauritania declared their readiness to cooperate fully with MINURSO in the context of the settlement plan.

16. On the issue of establishing a dialogue between the parties, the Secretary-General noted in his report 6/ the strong support expressed by the two observer countries during the Special Envoy's visit. While remaining at the full disposal of the parties, should they agree to hold talks in whatever format, in order to facilitate a settlement of their conflict, the Secretary-General suggested that the Security Council as a whole or individual Member States consider possible ways and means of assisting the parties in that regard.

17. In the light of the results of his Special Envoy's mission, the Secretary-General recommended that the Security Council consider, as one option, extending the mandate of MINURSO for four months ending on 31 May 1996. He emphasized, however, that the situation of stalemate that had arisen in December 1995 would in all probability confront the United Nations in a few months time, if and when the Identification Commission succeeded in completing the processing of applicants in accordance with the agreement reached during the Special Envoy's visit. He promised to continue his endeavour to find common ground between the two parties, but stressed that it was equally important for all those Member States in a position to do so to exert efforts in the same direction.

18. The Secretary-General suggested that, as a possible second option, the Security Council might conclude that a further extension could not be justified and that, consequently, plans should be prepared for a phased withdrawal of

MINURSO. However, he shared the concern expressed to the Special Envoy by the parties and even more so by the observer States, at the possibility of the Security Council considering phasing down, and eventually even closing down, MINURSO. He feared that such action could have destabilizing consequences for the region.

19. On 31 January 1996, the Security Council adopted resolution 1042 (1996), in which it expressed deep concern about the stalemate that had been hindering the identification process and the consequent lack of progress towards completion of the settlement plan. The Council called upon the parties to cooperate with the Secretary-General and MINURSO in resuming the identification process and encouraged them to consider additional ways to create confidence between themselves and to facilitate the implementation of the plan. It supported the Secretary-General's intention, in the absence of meaningful progress towards completion of the plan, to bring the situation to the immediate attention of the Council, and invited him in that eventuality to submit for its consideration a detailed programme for a phased withdrawal of MINURSO, in accordance with the second option contained in his report. 6/ The Secretary-General was requested to submit a report by 15 May 1996 on the implementation of that resolution.

20. In his report of 8 May 1996, 7/ the Secretary-General informed the Council that immediately after the adoption of resolution 1042 (1996), his Acting Special Representative had written to both parties proposing an early meeting to discuss the resumption of the identification process. On the basis of the assurances given to the Special Envoy during his mission, a detailed programme to complete the identification of all remaining applicants within 26 weeks was prepared for submission to the parties.

21. During meetings with the Acting Special Representative, the Government of Morocco indicated that it would accept the proposed programme, provided that there was no differentiation of treatment between different tribes and tribal groupings of the 1974 census and no new identification centres became operational before all remaining applicants were identified at existing centres. The practical consequence of these Moroccan provisos was that it would not have been possible to postpone processing of the contested groups. In addition, until the identification process had been completed, Morocco totally opposed the issuing of the lists referred to in paragraph 14 above. It contended that their disclosure would be an unacceptable departure from the provisions of the settlement plan and had not been approved by the Security Council. Subsequently, Morocco modified its position so as to facilitate the resumption of identification. It agreed that the process could restart with applicants from tribal groups not contested by the Frente POLISARIO, on the understanding that, from the fourth week, applicants from the contested groups would be included. However, the Moroccan position against the disclosure of the lists remained unchanged.

22. The Frente POLISARIO did not see the utility of discussing the proposed identification programme until such time as all the lists had been made available. In subsequent meetings with the Acting Special Representative, the Frente POLISARIO accepted the identification programme proposed for the first three weeks, provided that the lists of persons found eligible to vote were made available to it before the end of that period. It would not commit itself to

participate in the identification of applicants from any of the contested groups.

23. The Secretary-General therefore informed the Security Council that it had been impossible to resume the identification process, since it had come to a standstill at the end of 1995. He pointed out, however, that since its start in August 1994, more than 60,000 persons had been identified and over 77,000 convoked. Those were significant figures, if compared with the figure of 73,497 in the revised census list, even though 156,924 applicants still remained to be identified. That, however, had been an important achievement in respect of the procedures established, the logistical arrangements and the work completed, as well as the interaction between long-separated Saharans as a result of the movement of individuals from one side to the other.

24. In his report, 7/ the Secretary-General further informed the Security Council that on 1 April 1996, Major-General José Eduardo Garcia Leandro (Portugal) had replaced Brigadier-General André Van Baelen (Belgium) as Force Commander. The strength of the military component was then at 288, comprising 240 military observers and 48 military support personnel. The military component of MINURSO had continued to monitor and verify the ceasefire, which had by then held for nearly five years. There had been no confirmed violations during the reporting period. Recent complaints about alleged overflights could not be verified. The civilian police component, headed by Brigadier-General Walter Fallmann (Austria) had been reduced from 91 to 44, in keeping with the reduced activity in identification.

25. The Secretary-General reported no significant progress on the implementation of other aspects of the plan, such as the release of political prisoners, the exchange of prisoners of war, the reduction of Moroccan forces and the confinement of Frente POLISARIO troops. It would appear that those issues would be seriously addressed only after the impasse on identification had been resolved.

26. Given the positions of the two parties on the question of identification, the Secretary-General felt compelled to conclude that the required willingness did not exist to give MINURSO the cooperation needed for it to resume and complete the process within a reasonable period of time. He recommended that the process be suspended until such time as both parties provided convincing evidence that they were committed to resuming and completing it without further obstacles, in accordance with the settlement plan, and as mandated by the Security Council. That suspension would mean that the remaining members of the Identification Commission would leave the mission area at the end of May 1996, with the exception of a few who would be required to ensure the orderly closure of the remaining centres and the storage of the identification data. The records of the Commission would be transferred to the United Nations Office at Geneva for safe keeping. Suspension of identification would also entail the withdrawal of the civilian police component, except for a small number of officers to maintain contacts with the authorities on both sides and to plan for eventual resumption of the identification process.

27. On the military side, the Secretary-General noted that the maintenance of the ceasefire had been a major achievement of MINURSO. Its presence had

contributed to regional security, and the countries in the region felt that its withdrawal could result in instability, with potentially serious consequences for all concerned. While sharing this view, the Secretary-General was convinced that it was possible to reduce the strength of the military component of MINURSO without impairing its operational effectiveness in the field. He therefore proposed a reduction in its strength by 20 per cent, from 288 to 230 military personnel, without having to reduce the number of team sites or to curtail patrolling activity.

28. The Secretary-General stressed that his recommendation to suspend the work of the Identification Commission and reduce the number of civilian police and military observers implied no lessening of resolve to discharge the mandate entrusted to him by the Security Council. In a continuing effort to overcome existing obstacles, he proposed maintaining a political office at Laayoune with a liaison office at Tindouf. That office, headed by his Acting Special Representative and staffed by a small number of political officers, would maintain a dialogue with the parties and the two neighbouring countries and facilitate any other efforts that could help set the parties on a course towards an agreed formula for the resolution of their differences. The Secretary-General was also hopeful that through a continuing political presence some humanitarian issues, such as the release of Saharan political prisoners and the exchange of prisoners of war, could be resolved without waiting for other aspects of the settlement plan to be implemented.

29. Conscious of the necessity to keep searching for solutions to the impasse in Western Sahara and to build upon the existing achievement of identifying more than 60,000 applicants, the Secretary-General informed the Council that he had instructed his Acting Special Representative to continue to explore with the parties and the neighbouring countries confidence-building measures that might allow the resumption of contacts among all concerned. He urged Member States in a position to help to continue to exert their influence to facilitate that process. He recommended the extension of the mandate of MINURSO for a period of six months at the reduced strength outlined above.

30. On 29 May 1996, the Security Council adopted resolution 1056 (1996), in which it supported the Secretary-General's proposals contained in his report of 8 May 1996. 7/ The Council urged the two parties to demonstrate without delay the political will, cooperation and flexibility necessary to permit the resumption and early completion of the identification process and the implementation of the settlement plan. It noted with satisfaction that the parties had respected the ceasefire and called upon them to continue to do so. It also called upon them, as a demonstration of goodwill, to cooperate with the United Nations in the implementation of certain aspects of the plan, such as the release of Saharan political prisoners and the exchange of prisoners of war on humanitarian grounds, as soon as possible, and encouraged them to consider additional ways to create confidence between themselves in order to remove obstacles to the implementation of the plan. The Council extended the mandate of MINURSO until 30 November 1996 and requested the Secretary-General to continue his efforts to break the impasse and to submit a report by 31 August on the outcome of his efforts. He was also to keep the Council closely informed of all significant developments and to submit by 10 November 1996 a comprehensive report on the implementation of the resolution.

31. On 10 May 1996, the Permanent Representative of Morocco to the United Nations submitted a memorandum 8/ to the Secretary-General, in which Morocco reaffirmed its respect for the settlement plan and stated that it had done all it could to facilitate the plan's implementation. The memorandum stated Morocco's desire to see the Security Council, to whom that task had been entrusted, ensure respect for the settlement plan. Another memorandum, 9/ submitted on behalf of the Frente POLISARIO by Namibia and the United Republic of Tanzania on 22 May 1996, attributed a possible United Nations failure and withdrawal of MINURSO to open Moroccan opposition to a free and fair referendum and a lack of firmness by MINURSO in the management of the peace plan, as well as the categorical opposition of Morocco to the principle of transparency in the management of the peace process.

32. The Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples considered the question of Western Sahara on 24 July 1996. During the consideration of the question, the Special Committee had before it a working paper containing information on developments concerning the Territory. 10/

33. In his progress report of 20 August 1996, 11/ the Secretary-General informed the Security Council that the Acting Special Representative, assisted by the small staff of the political office at Laayoune and the liaison office at Tindouf, had been active in continuing the dialogue with the parties and the two neighbouring countries and had made repeated efforts to help set the parties on a course for the resolution of their differences. However, despite the efforts of the Acting Special Representative to resume the identification process, the positions of the sides were such that it appeared unlikely that it would be resumed any time soon.

34. The staff of the Identification Commission had been reduced with the last members departing after the identification archives had been transferred to the United Nations Office at Geneva for safe keeping. The civilian police component, whose work was closely related to that of the Identification Commission, had been reduced from 44 to 7. Those remaining continued to ensure the security of computerized information and other sensitive equipment at Laayoune and Tindouf. With the suspension of the identification process, most of the OAU observers had also departed with the exception of a high-level OAU presence that remained to ensure cooperation with MINURSO. The Secretary-General expressed his appreciation to OAU for its contribution throughout the identification process and for its continuing cooperation for the implementation of the settlement plan.

35. The Secretary-General further reported that the Independent Jurist had visited the region in early July and, accompanied by the Acting Special Representative, had met with the Moroccan authorities at Rabat to follow up on an unofficial list containing the names and dates of arrest of alleged Saharan political prisoners that had been communicated earlier to the Government of Morocco. The Moroccan authorities had responded that eight persons who, a year ago, had been condemned to long prison sentences, but whose term had been reduced to one year as a result of a royal pardon, were to be released in early July. As for the rest, the Moroccan authorities said a considerable number was unknown, some names were allegedly duplicated in the list, some had been freed,

some were already dead, and a small number were said to be with the Frente POLISARIO. The Moroccan authorities informed the Independent Jurist that at that stage, they were not prepared to discuss individual names and cases in the unofficial list. They would be ready, however, to engage in discussion of a formal list established by the Independent Jurist on the basis of definite elements provided by the Frente POLISARIO and transmitted to them officially by the United Nations.

36. The Independent Jurist and the Acting Special Representative travelled to Las Palmas where they met with representatives of the Frente POLISARIO, who stressed the need for effective action on the question of the political detainees and announced their readiness to contribute to the work of the Independent Jurist. The latter informed the Frente POLISARIO of his readiness to visit the Tindouf area during the second half of August 1996.

37. The Secretary-General's report added that the reduction of the military component of MINURSO by 20 per cent had been implemented gradually. The number of military personnel would be reduced from 288 to 258 by the end of August and reach 232 by the end of September. The approved number of 230 would be attained in October. The ceasefire had continued to hold. However, a few days prior to the adoption of resolution 1056 (1996), some local Frente POLISARIO commanders were purported to have placed restrictions on the freedom of movement of MINURSO observers at some team sites in order to register their concern about the discussions over the draft resolution then taking place in New York. Those restrictions had been strongly protested by the Acting Special Representative.

38. In closing, the Secretary-General appealed to the two parties to demonstrate flexibility and cooperate with his Acting Special Representative in his efforts to help them find a solution to their differences. He hoped that the support expressed by the two neighbouring countries both to himself and to his Acting Special Representative would contribute to overcoming the impasse and also appealed to Member States with influence with the parties to lend their support to the efforts of the United Nations.

39. On 26 August 1996, the Frente POLISARIO addressed a letter to the President of the Security Council regretting the contents of the report and requesting that the members of the Council take note of its comments with regard to the report. In the view of the Frente POLISARIO, the report was characterized by confusion concerning its viewpoint and by abetment of Morocco's obstruction and intransigence.

40. The Government of Morocco wrote to the President of the Security Council on 5 September expressing its view that the report confirmed the persistent refusal of the Frente POLISARIO to participate in identifying applicants whose applications were correctly submitted, thus blocking not only the identification process, but also the entire referendum. Morocco appealed to the Council to resume its role and to confirm that of the Secretary-General under the settlement plan as the sole framework of application for the relevant Council resolutions.

41. During its meeting of 11 September 1996 to consider the report, the Security Council asked the President to convey orally to the Secretary-General a

message expressing its concern at the continuing impasse in the peace process. The Council encouraged the Acting Special Representative to redouble his efforts to overcome the impasse and reaffirmed its readiness to help the peace process in any way possible, while underlining the responsibility of the two parties in the peace process.

Notes

1/ S/1995/986.

2/ S/1995/779.

3/ S/1995/924.

4/ S/21360 and S/22464 and Corr.1.

5/ S/1995/925.

6/ S/1996/43 and Corr.1.

7/ S/1996/343 and Corr.1.

8/ S/1996/345.

9/ S/1996/366.

10/ A/AC.109/2059.

11/ S/1996/674 and Corr.1.

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GENERAL ASSEMBLY
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Agenda items 33, 35 and 85
THE SITUATION IN THE MIDDLE EAST
QUESTION OF PALESTINE
REPORT OF THE SPECIAL COMMITTEE TO
INVESTIGATE ISRAELI PRACTICES
AFFECTING THE HUMAN RIGHTS OF THE
PALESTINIAN PEOPLE AND OTHER ARABS
OF THE OCCUPIED TERRITORIES

SECURITY COUNCIL
Fifty-first year

Letter dated 28 September 1996 from the Permanent Observer of Palestine to the United Nations addressed to the Secretary-General

Following my last three letters to you, dated 24, 25 and 26 September 1996 (A/51/400-S/1996/779, A/51/407-S/1996/786 and A/51/411-S/1996/791), I have been instructed to bring the following to your immediate attention.

On Friday, 27 September 1996, the Israeli army and police, in yet another escalation of the situation in occupied East Jerusalem, stormed into the holy area of Al-Haram Al-Sharif shooting at Palestinian prayers and causing three deaths and injuring 120. The three Palestinians killed were:

1. Mr. Jawad Abdel-Halim Hijazi Al Bazlamit - 20 years old;
2. Mr. Aymen Yehya Mustafa Edkidi - 25 years old;
3. Mr. Ibrahim Ali Muosa Abu-Ghanam - 22 years old.

This additional crime committed by the Israeli occupying authorities confirms the intention of the Israeli Government to further change the existing situation of the holy places, as well as the situation of Jerusalem as a whole.

Since the opening of the tunnel on Monday, 23 September 1996, the Israeli Government continues to further escalate the situation in the occupied Palestinian territory, including Jerusalem, by adamant provocative declarations and statements as well as continued army and police attacks on Palestinian

civilians, causing greater casualties. While the casualties continue to increase, today they stand at more than 80 killed and more than 1,000 injured.

The situation described above adds urgency to the needed actions by the Security Council.

I would be grateful if you would arrange to have the text of the present letter circulated as a document of the General Assembly, under agenda items 33, 35 and 85, and of the Security Council.

(Signed) Nasser AL-KIDWA
Permanent Observer of Palestine
to the United Nations